



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 18-01926
)
Applicant for Security Clearance)

Appearances

For Government: Daniel O'Reilly, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

06/14/2019

Decision

LYNCH, Noreen A., Administrative Judge:

Statement of the Case

On October 29, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline G (Alcohol Consumption) and Guideline J (Criminal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on or after June 8, 2017. On November 27, 2018, Applicant timely submitted a response in which the allegations under Guideline G were admitted, the sole allegation raised under Guideline J was denied in part, and a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA) was requested.

On February 20, 2019, I was assigned the case. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 22, 2019, setting the hearing for May 9, 2019. The hearing was convened as scheduled.

The Government offered five documents, accepted without objection as exhibits (Exs.) 1-5, as well as one hearing exhibit, noted as Ex I. Applicant offered testimony,

presented four witnesses, and 19 documents, accepted without objection as Exs. A-S. The transcript (Tr.) was received on May 21, 2019, and the record was closed. Based on the exhibits, testimony, and record as a whole, I find Applicant mitigated the alcohol consumption security concern and criminal conduct security concerns raised.

Findings of Fact

Applicant is a 46-year-old contractor who has been in that position working for the same employer since 2015. He is a high school graduate who obtained his undergraduate degree in 1997, and his Master's degree in 2014. (Exs. B, D) He is married and has six children. He completed a security clearance application in 2016. He has previously held a security clearance for about 15 years. (GX 1)

In December 2010, Applicant was arrested and charged with DUI and possession of an open container. (1.c) He had left a night club and was stopped for an erratic lane change. He pled not guilty and the charge was dismissed for lack of sufficient evidence. (GX 5, AX K) Applicant attended alcohol counseling classes. He returned to social drinking after a period of time. (Tr. 61)

In February 2013, Applicant was arrested and charged with DUI (first offense). He was found guilty of the charge, and as a result, was ordered to attend state alcohol safety action classes, and his driver's license was restricted for a period of one year. (1.b) He paid \$275 in fines. Applicant left a bar, but did not feel intoxicated. He acknowledged that he had three to four cocktails. (GX 2)

During his 2018 investigative interview, Applicant stated that he first drank alcohol at age 19 or 20, on the weekends at parties. He usually drank beer. He told the investigator that he drank at that time at home once a month. He also stated that he would not drink and drive again. (Investigative Interview)

In August 2017, Applicant was arrested and charged with DWI—second offense in five years. He pled guilty to the DWI and as a result he was ordered to attend state alcohol safety action programs, which he completed. (AX I) His driver's license was restricted until October 2018. (1.a) He admits that he made a poor choice that night. He was leaving a friend's house, and he believes he had three drinks. (Tr. 51) At the hearing, Applicant acknowledged that the 2013 incident did not leave him with the understanding of the magnitude of getting behind the wheel of a car after drinking. (Tr. 52) He had an ignition interlock system in place. On one occasion, he blew positive, but it was not from drinking but rather from mouthwash. (Tr. 73)

Since 2017, Applicant has not had a drink. (Tr. 52) He realized after the completion of 15 weeks of counseling with an LCSW and the treatment assessment report that noted his involvement with AA and men's groups, combined with abstinence that he did have a problem with alcohol which was something that was indeed impacting his life and needed to change. (Tr. 53, AX N) He submitted the monthly progress reports from the treatment sessions. Each one noted that Applicant was in full compliance with

the plan. (AX L) His conversations with others, such as his father and wife, convinced him that he had to abstain from drinking. (Tr. 53) He wants to support his family and without a security clearance, he could not continue to get federal contract positions.

Applicant signed a Letter of Intent in November 2018. (AX G) He signed an updated Letter of Intent in April 2019. (AX Q) He was credible in his testimony that he never drank at work or had any security violations during his career. (Tr. 54) Another motivation to abstain from alcohol is the fact that he lost a five year contract due to the alcohol issues. He still attends AA meetings. He has been attending those meetings twice a week since 2017. (Tr. 77)

Since the 2017 DWI, Applicant has had no additional brushes with the law. He recognizes that his troubles were based on poor judgment that needed to be improved. During counseling, he totally refrained from alcohol. He made a pledge to himself and his family to abstain from the use of alcohol in the future. He signed two letters of intent. Applicant came to grips with alcohol use as a problem in his life. He has had two convictions in his entire adult life. His family supports him. Applicant's driving privilege has been restored.

Applicant's personal circle of friends has been reduced and he no longer socializes as much with those with whom he used to once abuse alcohol, preferring to associate with a more professional crowd. At present, he is excelling at work and looking to continue with his challenging position.

Applicant presented four witnesses who have known him for many years and are aware of the SOR allegations. Each stated that Applicant is a man of integrity and is dedicated to his family. (Tr. 19-25) One witness noted that Applicant is a changed man and believes he is credible that Applicant will not drink in the future. (Tr. 27) Applicant's father, who has held a security clearance, testified that Applicant was forthright with him and they have had conversations concerning the alcohol driving incidents. He has not seen his son drink in at least two years. (Tr. 34) Applicant's father stated that his son had no issues with drinking prior to the arrests. Applicant's wife of 12 years testified that she holds a security clearance and is aware of the alcohol arrests and convictions. She maintains that there is no alcohol in the home and that she does not drink. As to Applicant, her husband, she is convinced that he has learned a lesson from the incidents and realizes that he has put his family in jeopardy. She told him she was disappointed in him and that he has to be a role model for the children. (Tr. 42) She knows that he is ashamed of his previous behavior. Applicant lost his clearance due to the second alcohol incident.

Applicant submitted nine letters of recommendation. Each letter states that Applicant is an upstanding citizen. He is described as an outstanding leader and a trustworthy and reliable individual. (AX A)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. They are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to the AG, the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person in making a decision.

The protection of the national security is the paramount consideration. The AG requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. In addition, an applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Guideline G - Alcohol Consumption

The Alcohol Consumption guideline is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

Applicant's three alcohol-related arrests in 2010, 2013, and 2017 resulted in two convictions and one dismissal. This demonstrate his excessive use of alcohol and related poor judgment. They, therefore, establish the following disqualifying conditions under this guideline:

AG ¶ 22(a): alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder; and

AG ¶ 22(c): habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder.

The security concerns raised under this guideline could potentially be mitigated by the following applicable factors:

AG ¶ 23(a): so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;

AG ¶ 23(b): the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; and

AG ¶ 23(d): the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant was cited three times for drinking and driving within a seven year period, with his last in 2017. Both were the result of attending activities where it could be presumed alcohol would be imbibed, and predicted that driving home would conclude the evening. Applicant acknowledges his poor judgment and takes responsibility for his actions. He has completed an alcohol and drug counseling program, 15 sessions of counseling and still attends AA.

Applicant stopped drinking in 2017. He has come to grips with alcohol consumption as an issue impacting his family and his life. He has signed two letters of intent. These efforts show promise. At least a year free of drinking seems to be a reasonable period or benchmark upon which to best assess that Applicant is fully in

control of his use of alcohol and capable of responsible judgment. AG ¶ 23(b and d) apply.

Guideline J – Criminal Conduct

The concern raised by criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Applicant drinking and driving convictions in 2013 and 2017 establish the following disqualifying conditions:

AG ¶ 31(a): a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in 6 combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

AG ¶ 31(b): evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The security concerns raised under this guideline have been mitigated by the following applicable factor:

AG ¶ 31(d): there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant is genuinely contrite over his past criminal offenses. He has completed appropriate alcohol and drug counseling, attends AA, changed his professional focus and personal circle of friends, abstains from alcohol consumption, matured, and foresworn driving after drinking. He has settled down with his wife and family. Applicant completed all court-ordered requirements and has had no further incidents. He has excellent references. Such accomplishments demonstrate that he is now ready to go forward living his life in compliance with laws and regulations.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's

conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under the two applicable guidelines in my whole-person analysis. I also considered Applicant's highly credible testimony, background, age, behavioral changes, and subsequent maturation.

Overall, the record evidence leaves me assured that this conduct will not recur. I found him credible. He has supported his wife and family for many years. He attends AA and goes to church. He sought the advice of his father and wife who support him and have made it clear to him that if he continued on his former path, he would lose his family. He has many excellent references. He has never had a security violation or incident of alcohol at work. I have no questions or doubts about Applicant's eligibility and suitability for a security clearance vis-à-vis alcohol consumption. The evidence persuades me that Applicant has matured sufficiently to comport his behavior with applicable laws and regulations. Consequently, I conclude alcohol consumption security concerns and criminal conduct concerns are mitigated.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Noreen A. Lynch
Administrative Judge